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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (NC)

**DECLARATION OF SARA E. JENKINS
IN SUPPORT OF ARISTA'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN ARISTA'S MOTION
STRIKE EXPERT OPINIONS AND
TESTIMONY OF DR. JUDITH A.
CHEVALIER**

DECLARATION OF SARA E. JENKINS

I, Sara E. Jenkins, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Arista Networks, Inc.’s (“Arista”) Administrative Motion to File Under Seal Confidential information filed in connection with Arista’s Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier. Dkt. 422. I make this declaration in accordance with Civil Local Rule 79-5(e).

3. As a motion to strike expert testimony, Arista’s motion is non-dispositive. In this context, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, that the document is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

4. Pursuant to Civil L.R. 79-5(e), good cause exists to seal the portions of the documents identified below because the information sought to be sealed reflects confidential information that “give[s] [Cisco] an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Restatement of Torts* § 757, cmt b).

5. Exhibit A to the Declaration of Elizabeth K. McCloskey in Support of Arista's Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier ("McCloskey Declaration") is a copy of the Expert Report of Dr. Judith A. Chevalier dated June 24, 2016. This report contains information that was designated by Cisco in this matter as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order. Specifically, this exhibit contains confidential information about Cisco's sales, customers, competitive strategies, and related information. Because this confidential information occurs throughout the entire report, the entire report should remain sealed. Disclosure of this information would harm Cisco's business by, *inter alia*, allowing Cisco's competitors to learn of Cisco's strategies for making sales and for gathering information in furtherance of the same, and allowing competitors to in turn adopt and/or counteract Cisco's strategies. This would "harm [Cisco's] competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

6. Exhibit B to the McCloskey Declaration is copy of transcript excerpts from the deposition of Dr. Judith A. Chevalier taken on July 26, 2016, which was designated by Cisco as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order. Specifically, Cisco seeks to seal the following portions of this exhibit: 154:1-157:17, 157:18-166:19, 194:21-196:10, and 218:8-18. These portions contain confidential information about Cisco's sales strategies, competitive strategies and customers. Disclosure of this information would harm Cisco's business by, *inter alia*, allowing Cisco's competitors to learn of Cisco's strategies for making sales and for gathering information in furtherance of the same, and allowing competitors to in turn adopt and/or counteract Cisco's strategies. This would "harm [Cisco's] competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

7. Exhibit E to the McCloskey Declaration is copy of the Sur-Rebuttal Expert Report of Dr. Judith A. Chevalier dated July 21, 2016. This report contains information that was designated by Cisco in this matter as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order. Specifically, this exhibit contains confidential information about Cisco's sales,

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct, and that this declaration was executed in Redwood Shores,
11 California, on August 9, 2016.

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